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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,826	10/30/2003	Young-Gun Ko	SAM-0449	9264

7590 11/21/2006

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EXAMINER
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CRANE, SARA W

ART UNIT	PAPER NUMBER
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2811

DATE MAILED: 11/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/697,826

Applicant(s)

KO ET AL.

Examiner

Sara W. Crane

Art Unit

2811

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 26 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

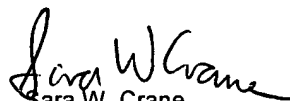
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 27-46.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 72,73,75-95.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
Sara W. Crane  
Primary Examiner  
Art Unit: 2811

Continuation of 3. NOTE: The extending "from a point of contact" is an example of a new issue..

Continuation of 11. does NOT place the application in condition for allowance because: Regions 508 of Nishiyama extend in a vertical direction along lower side portions of the gate electrode. Applicant argues that these regions are not extensions, or portions, of the gate dielectric layer because these regions function as gate sidewalls. Applicant's vertically-extending portions of the gate insulator also function as gate sidewalls, however. Functional language can be relied upon to distinguish only when the function necessarily gives rise to distinct structure. Mere labels do not distinguish. In this case, the horizontal portions of dielectric between the gate electrode and the channel function as gate dielectric, in Applicant's invention and in the prior art as well. The vertically extending portions function as gate sidewalls, in Applicant's invention and in the prior art as well. The claim designation of function therefore does not give rise to distinct structure. There is nothing in the claim language requiring the various portions of the "gate dielectric layer" as recited in claim 72, for example, to be homogeneous, to be made of the same materials, to have the same thicknesses, or to be made in a single deposition step. All that is required is a "layer," carrying the label "gate dielectric layer," which includes two distinct types of portions: a horizontally-extending portion, and vertically-extending portions. This is as shown in the prior art. Applicant argues further that the source/drain layers 509/510 do not extend parallel to the substrate in a horizontal direction, because the sides of these regions extend at an angle to the substrate. Once again, the only issue of relevance here is whether the prior art region meets the claim language. That there is an additional feature in the prior art, not specified in the claims, is not relevant, because the claims are written in open claim language. Moreover, the corresponding layers in Applicant's device also have sides that extend at an angle to the substrate. The horizontally extending portions of the source/drain layers extend parallel to the substrate in a horizontal direction, in Applicant's invention and in the prior art as well.